

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26046
Docket Number MW-25787

John B. LaRocco, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation (formerly Penn Central
(Transportation Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The five (5) days of suspension imposed upon Machine Operator C. D. Craig for alleged failure to properly protect his assignment on October 30, 1981 and the twenty-five (25) days of suspension imposed upon him for alleged 'hostility' and 'disrespect' to Assistant Supervisor G. R. Cain on October 30, 1981 was without just and sufficient cause (System Docket 754).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered".

OPINION OF BOARD: By proper written notice, the Carrier charged Claimant, a Backhoe Operator, with failing to protect his assignment, insubordination and being disrespectful to the Assistant Supervisor. All three infractions allegedly occurred on October 30, 1981. The Carrier conducted a fair and impartial Rule 5 trial on November 19, 1981. Subsequently, the Carrier assessed Claimant a five day suspension for tardiness and a twenty-five day suspension for engaging in a hostile verbal altercation with the Assistant Supervisor. Claimant was exonerated on the insubordination charge.

After purusing the record, we conclude that the Carrier proved, with substantial evidence, that Claimant committed both offenses.

Despite the factual dispute over what time Claimant reported to work, the Crossing Foreman (Claimant's immediate Supervisor) candidly testified that he, Claimant and the truck driver had overslept. In addition, the Assistant Supervisor observed the boom truck at the camp at 6:40 A.M. which belies Claimant's assertion that the three men had departed for the job site at 6:35 A.M. Claimant, was obligated to commence work at 6:30 A.M. Therefore, Claimant failed to protect his assignment at the mandatory starting time on October 30, 1981, and this Board must uphold the five day suspension.

When Claimant, the driver and the Foreman arrived at the job site, the Assistant Supervisor used profane and obscene words to express his displeasure with their tardiness. Claimant began to argue with the Assistant Supervisor about starting times. Claimant also utilized earthy language and cursed the Supervisor. Both men became angry and upset. The Foreman and Driver attempted to explain to the Assistant Supervisor that the three workers had made two necessary stops en route to the job site but the Assistant Supervisor refused to listen to any excuses. The Assistant Supervisor pulled Claimant out of service.

Claimant was disrespectful to the Assistant Supervisor. Instead of provoking an argument over tardiness, Claimant should have filed a Claim contesting the Assistant Supervisor's sharp rebuke. However, the record reflects that the Assistant Supervisor was partially responsible for increasing the intensity of the discussion. Probably as a result of losing their tempers, the Assistant Supervisor and Claimant escalated a minor incident into major verbal confrontation. Thus, neither the Assistant Supervisor nor Claimant comes to this Board with clean hands. Third Division Award No. 23315. Since the Foreman's conduct further incited Claimant, a twenty-five day suspension was excessive and unduly harsh. Third Division Award No. 23564. Thus, the suspension is reduced to five days and the Carrier shall compensate Claimant accordingly.

To reiterate, this Board affirms the five day suspension but reduces the twenty-five day suspension to five days.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.